

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

IN RE:

CITATION CORPORATION, et al.,¹

Debtors.

)
) **Chapter 11**
)
) **Case No. _____**
) **(Jointly Administered)**

**DEBTORS' MOTION FOR EXPEDITED FINAL HEARING ON
CERTAIN ADDITIONAL FIRST-DAY PLEADINGS**

COME NOW, Citation Corporation ("Citation"), its holding company, and certain of its direct and indirect subsidiaries (the "Subsidiaries"), as debtors and debtors in possession (collectively, the "Debtors"), by and through their undersigned counsel, and move this Court (this "Motion") to set an expedited final hearing on certain of the Debtors' pleadings filed on the Petition Date (as defined below) to be heard with the remainder of the First-Day Pleadings (as defined below) on September 20, 2004, at 2 p.m. In support of this Motion, the Debtors rely on the Affidavit Of Charles P. Bloome In Support Of Debtors' Motion For Expedited Hearing On First-Day Pleadings, as well as the Affidavit of Charles P. Bloome in Support of Chapter 11 Petitions and First Day Orders, each filed on the Petition Date, and state as follows:

¹ In addition to the Citation Corporation, the Debtors include the following entities: (i) Citation Holding Company, (ii) Berlin Foundry Corporation, (iii) Bohn Aluminum, Inc., (iv) Castwell Products, Inc., (v) Citation Precision, Inc., (vi) HI-TECH, Inc., (vii) Iroquois Foundry Corporation, (viii) ISW Texas Corporation, (ix) Mansfield Foundry Corporation, (x) OBI Liquidating Corp., (xi) Texas Steel Corporation, (xii) TSC Texas Corporation, (xiii) Citation Aluminum, LLC, (xiv) Citation Castings, LLC, (xv) Citation Grand Rapids, LLC, (xvi) Citation Lake Zurich, LLC, (xvii) Citation Michigan, LLC, (xviii) Citation Wisconsin Forging, LLC, (xix) Citation Wisconsin, LLC, (xx) ITM Holding Co., LLC, (xxi) Interstate Southwest, Ltd., (xxii) Texas Foundries, Ltd., and (xxiii) MFC Liquidating Company, Ltd.

JURISDICTION AND VENUE

1. On September 18, 2004 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") with the Clerk of this Court. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to §§ 1107 and 1108. The Debtors have moved this Court for joint administration of these chapter 11 cases.

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of the Debtors' chapter 11 cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Also on the Petition Date, the Debtors filed with this Court approximately twenty (20) pleadings (collectively, the "First-Day Pleadings"), including the following:

Final

1. Debtors' Motion For An Order Pursuant To 11 U.S.C. § 345 Authorizing The Waiver Of Investment And Deposit Requirements (the "Waive 345 Motion");
2. Debtors' Motion Pursuant To 11 U.S.C. §§ 105(a), 363, 507(a)(8), And 541 For Authorization To Pay Prepetition Sales And Use Taxes (the "Tax Motion");

RELIEF REQUESTED

4. Due to the exigent nature of the relief requested in the First-Day Pleadings, the Debtors hereby respectfully request this Court to set an immediate hearing on the First-Day Pleadings as soon as practicable on the Court's calendar.

5. The Debtors request that this Court conduct expedited final hearings on the Petition Date for the following First-Day Pleadings and enter the First Day Orders as proposed therewith:

1. The Waive 345 Motion; and

2. The Tax Motion.

6. It is crucial that this Court conduct a final hearing on the Petition Date on the Waive 345 Motion and the Tax Motion so that the Debtors can continue to operate their businesses in an economic and efficient manner without disruption.

7. This Court has previously set the Debtors' First-Day Pleadings for expedited hearing on September 20, 2004, at 2 p.m. At that hearing, the Court will hear argument and testimony regarding all of the First-Day Pleadings, including those related to debtor-in-possession financing and use of cash collateral as well as the Debtors' request to maintain and continue the cash management system.

8. The Debtors seek authorization from this Court to continue to use their existing cash management system and to maintain their existing bank accounts. Absent order of this Court authorizing the continued use of the Debtors' cash management system and the maintenance of the existing bank accounts, the banks and other financial institutions at which the Debtors' bank accounts are maintained will not honor and pay the payroll checks. The Waive 345 Motion is intertwined with the Debtors' continuation of their cash management system.

9. The collected but not remitted taxes, at least in some states, constitute so-called "trust fund" taxes, which are held in trust for payment to the taxing authorities. *See Begier v. Internal Revenue Serv.*, 496 U.S. 53 (1990); *In re Shank*, 792 F.2d 829, 830 (9th Cir. 1986) (sales taxes required by state law to be collected by sellers from their customers are "trust fund" taxes); *DeChiaro v. New York State Tax Comm'n*, 760 F.2d 432, 433-34 (2d Cir. 1985) (same); *Rosenow v. Illinois Dep't of Revenue (In re Rosenow)*, 715 F.2d 277, 282 (7th Cir. 1983) (same). To the extent these "trust fund" taxes are collected, they are not property of the Debtors' estates


under Bankruptcy Code § 541(d). *See In re American Int'l Airways, Inc.*, 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987) (excise and withholding taxes); *In re Tap, Inc.*, 52 B.R. 271, 272 (Bankr. D. Mass. 1985) (withholding taxes). Furthermore, many state statutes, including those of certain of the states in which the Debtors operate, hold officers and directors of collecting entities personally liable for sales and use taxes, however denominated, owed by those entities. To the extent that any taxes remain unpaid by the Debtors as of the Petition Date, the Debtors' officers and directors may be subject to lawsuits or criminal prosecution during the pendency of these chapter 11 cases. *See, e.g.*, Ala. Code § 40-29-73 (1975).

NOTICE AND PRIOR MOTIONS

10. Notice of the Motions for which expedited relief is requested herein has been given to (1) the Office of the Bankruptcy Administrator for the United States Bankruptcy Court for the Northern District of Alabama, Southern Division; (2) counsel to JPMorgan Chase Bank as Administrative Agent for the Debtors' prepetition lenders; (3) counsel to JPMorgan Chase Bank as Administrative Agent for the Debtors' proposed postpetition lenders; (4) the Debtors' twenty (20) largest unsecured creditors (on a consolidated basis); and (5) the District Director of Internal Revenue Service for the Northern District of Alabama. The Debtors submit that given the circumstances and the notice of the relief requested herein, no other or further notice is required.

11. No previous motion for the relief sought herein has been made to this or any other court.

WHEREFORE, the Debtors request that the Court enter an order, substantially similar to the order attached hereto as Exhibit "A," granting this Motion, setting expedited hearing and granting such other and further relief as the Court deems appropriate.

A handwritten signature in black ink, appearing to read "Michael Leo Hall", written over a horizontal line.

Michael Leo Hall

Robert B. Rubin

Rita H. Dixon

Attorneys for Debtors and Debtors in
Possession

OF COUNSEL:

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Exhibit "B"

Proposed Order Granting Expedited Hearing

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

IN RE:)	
)	Chapter 11
CITATION CORPORATION, et al.,¹)	
)	Case No. _____
Debtors.)	(Jointly Administered)

**ORDER GRANTING DEBTORS' MOTION FOR EXPEDITED HEARING
ON FIRST-DAY PLEADINGS**

This matter came to be heard upon the motion (the "Motion") of Citation Corporation ("Citation"), its holding company, and certain of its direct and indirect subsidiaries (the "Subsidiaries"), as debtors and debtors in possession (collectively, the "Debtors"), for this Court to set an expedited hearing on the First-Day Pleadings (as defined in the Motion) as quickly as the Court's docket will allow. Upon consideration of the Affidavit of Charles P. Bloome in Support of Debtors' Motion For Expedited Hearing on First-Day Pleadings and the Affidavit of Charles P. Bloome in Support of Chapter 11 Petitions and First Day Orders; the Court having

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jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; due notice of the Motion having been provided to (1) the Office of the Bankruptcy Administrator for the United States Bankruptcy Court for the Northern District of Alabama, Southern Division; (2) counsel to JPMorgan Chase Bank as Administrative Agent for the Debtors' prepetition lenders; (3) counsel to JPMorgan Chase Bank as Administrative Agent for the Debtors' proposed postpetition lenders; (4) the Debtors' twenty (20) largest unsecured creditors (on a consolidated basis); and (5) the District Director of Internal Revenue Service for the Northern District of Alabama; and it appearing that no other or further notice need be provided; the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors, and all parties in interest; upon the Motion and all of the proceedings before this Court; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that the Motion is **GRANTED**; and it is further

ORDERED that, due to the exigent nature of the relief requested in the First-Day Pleadings, the Court shall conduct hearings at the United States Bankruptcy Court For the Northern District of Alabama, Southern Division, 1800 Fifth Avenue North, Birmingham, Alabama 35203, on September 20, 2004, at 2 p.m. in Courtroom 2, for each of the matters set forth below, listed by the type of relief requested therein:

Final

1. Debtors' Motion For An Order Pursuant To 11 U.S.C. § 345 Authorizing The Waiver Of Investment And Deposit Requirements
2. Debtors' Motion Pursuant To 11 U.S.C. §§ 105(a), 363, 507(a)(8), And 541 For Authorization To Pay Prepetition Sales And Use Taxes

and it is further

ORDERED that counsel for the Debtors shall serve of copy of this Order on the service list of parties in interest as appears above. Such service shall be made by expeditious means (including by facsimile or electronic mail). However, to the extent a motion for expedited hearing is granted in the related cases, counsel need serve a copy of this Order in only one of the cases.

Dated this the _____ day of September, 2004.

UNITED STATES BANKRUPTCY JUDGE